

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JEREMY W. KELLY,

Plaintiff,

v.

Civil Action No. 2:18-cv-1078

UNITED STATES MARSHALS SERVICE,
and JAY COUNTY SHERIFF DEPARTMENT
(Government Office),

Defendants.

MEMORANDUM OPINION AND ORDER

Pending is plaintiff's motion for "'Actio' Damni Injuria Procedure Torts," filed June 25, 2018. The motion appears to be an attempt to file tort claims under the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671-2680.

This matter was previously referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for initial screening and submission to the court of his Proposed Findings and Recommendation ("PF&R") for disposition, pursuant to 28 U.S.C. § 636(b) (1) (B) .

Plaintiff is presently incarcerated in the Westville Correctional Facility in Westville, Indiana, where he is serving a four-year sentence after being convicted of one count of battery in the Circuit Court of Jay County, Indiana. This matter is one

of three civil actions filed by plaintiff in this court regarding his Indiana criminal and habeas corpus proceedings.¹

On July 9, 2018, Magistrate Judge Tinsley entered his PF&R recommending that the court find that there is no plausible basis for subject matter jurisdiction in this action, that plaintiff's motion for "'Actio' Damni Injuria Procedure Torts" be denied, and that the matter be dismissed from the docket of the court. Magistrate Judge Tinsley further recommends that the court "notify the plaintiff that the continued filing of civil actions concerning his Indiana criminal or habeas corpus proceedings over which this court lacks jurisdiction and venue may result in the imposition of a pre-filing injunction prohibiting the plaintiff from filing any additional petitions or motions concerning such claims in this court, or other sanctions."

No objections having been filed, the plaintiff has waived de novo review of the matter by this court.

It is, accordingly, ORDERED as follows:

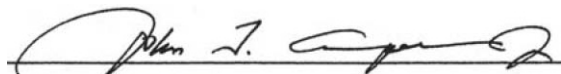
1. Magistrate Judge Tinsley's Proposed Findings and Recommendation be, and they hereby are, adopted and incorporated in full;

¹ Plaintiff has also filed Civil Action Nos. 2:18-cv-1103, to transfer a cause from state court to federal court, and 2:18-cv-1104, also apparently attempting to assert a claim under the Federal Tort Claims Act.

2. Plaintiff's motion for "'Actio' Damni Injuria Procedure Torts" be, and it hereby is, denied;
3. This action be, and it hereby is, dismissed with prejudice for lack of federal subject matter jurisdiction and removed from the docket of this court; and
4. Plaintiff Jeremy W. Kelly be, and hereby is, WARNED that the continued filing of civil actions concerning his Indiana criminal or habeas corpus proceedings, over which this court lacks jurisdiction and venue, may result in the imposition of a pre-filing injunction prohibiting the plaintiff from filing any additional petitions or motions concerning such claims in this court, or other sanctions.

The Clerk is directed to forward copies of this memorandum opinion and order to the pro se plaintiff, all counsel of record, and United States Magistrate Judge Dwane L. Tinsley.

ENTER: August 1, 2018



John T. Copenhaver, Jr.
United States District Judge